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June 13, 1978

DRAFT

Mr. Noel V. Starblanket,  
President,  
National Indian Draft Discussion Paper  
First Floor, Bankal Building, on the  
102 Bank Street,  
Ottawa, Ontario Revision of the Indian Act  
K1P 5N4

Dear Mr. Starblanket:

Please find enclosed a draft discussion paper on  
revisions of the Indian Act prepared for our meeting  
on Friday, June 16, 1978.

I look forward to discussing it with you at that time.

Yours sincerely,

J. Hugh Paulkner.

Attach.

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## INTRODUCTION

The purpose of this paper is to provide a framework for the revision of the Indian Act. The Act is a complex piece of legislation that has been in force since 1876. It is a product of a long and often painful process of assimilation. The Act is a reflection of the government's policy of assimilation. The Act is a reflection of the government's policy of assimilation. The Act is a reflection of the government's policy of assimilation.

The framework set out in this paper is based on the following principles:

- a. There would be a process of consultation with Indian bands across the country.
- b. The process would be a two-stage process. The first stage would be a process of consultation with Indian bands across the country. The second stage would be a process of consultation with Indian bands across the country.
- c. Opportunities should be provided for Indian bands to participate in the process of consultation. This would be done through the National Indian Brotherhood, Indian Associations, and the Provincial and Territorial Indian Councils.

## DRAFT DISCUSSION PAPER

### ON THE

### REVISION OF THE INDIAN ACT

- d. It should be recognized that the government is responsible for the Indian Act. It is the government's responsibility to ensure that the Act is revised in a way that is consistent with the principles of consultation and self-determination.

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## INTRODUCTION

The purpose of this paper is to provide a framework for discussion on revision of the Indian Act. Based upon previous Joint Committee of Cabinet and the National Indian Brotherhood discussions, the aim is that of a limited package of amendments rather than a comprehensive revision of the Act. In this first phase of revisions to the Act, some parts of the package might have to be provisional or interim pending consideration of other related matters in subsequent phases of the revision processes.

The framework would be dealt with in the context of the following:

- a. There would continue to be widespread consultation with Indian bands across the country.
- b. The process should produce a rational package of substantive amendments to the Act within a predetermined time frame and within prescribed cost limits.
- c. Opportunities should be provided for a continuing role and contribution by the National Indian Brotherhood, Indian Associations at the Provincial and Territorial levels and other Indian groups (e.g. I.R.I.W.).
- d. Consultation should take place with other interested groups (e.g. Provincial and Territorial governments).
- e. It should be emphasized throughout as appropriate that the government is responsible for amending the Act, and that it seeks, through the various consultations, to achieve a broad consensus (not necessarily agreement) on what it proposes to proceed with.

A number of issues have been identified as outstanding by Indian people and government. It is proposed that these be become part of a first phase of revision of the Act. Other issues which are equally important but require longer consideration will be addressed in subsequent revisions to the Act. These more immediate issues include Indian band government, education, discrimination on the grounds to sex and land surrenders.

An additional issue concerns the right of Indians to hunt, trap, fish and gather. These activities are integral to the cultural, social and economic well-being of Indian people who continue to live their traditional way of life in living and working off the land. While the economic significance





of these activities is less relevant to Indian people who have adopted non-traditional life styles and are engaged in non-traditional pursuits, for many of them these activities retain a vital social and cultural significance. Yet these activities are under tremendous pressure today and are a continuing source of grievances and confrontation, between many Indian people and non-Indian people, and between the former and governments.

The government is pursuing various avenues for dealing with this issue and is considering the desirability of a revision to the Act as one of the vehicles for this purpose.

## B. The role of band government: local self-government

The goal of Indian band government is to enable the Indian people, through responsible and accountable authorities at the band level, and in accordance with their capabilities and desires, to make major decisions regarding the political, economic, social and cultural well-being of their communities.

## C. Basic principles to be applied to the development of band government

### 1. The constitutional position

The British North American Act charges the Government of Canada with exclusive legislative authority for the matters which relate to "Indians and lands reserved for Indians." The powers and responsibilities vested in band governments derive their legitimacy from legislation passed by Parliament under this authority.

### 2. The nature of band government

Band governments are not "local" or "municipal" governments in the traditional meaning of these terms. Their particular relationship with the Federal government distinguishes them from other types of local government. The nature and character of their powers and responsibilities and their function as a form of government are fundamentally different from the governments of typical local entities. They are not to be confused with the governments of other types of local entities. They are not to be confused with the governments of other types of local entities. They are not to be confused with the governments of other types of local entities.



## II

### INDIAN BAND GOVERNMENT

#### A. Introduction

Amendments to the sections of the Indian Act dealing with band government should to the extent possible be based on a consensus between the Indian people and the Federal Government as to the basic underlying principles which should be applied to revising the band government system. What follows identifies the basic aim and the underlying principles for a revised band government system.

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##### 1. The constitutional position

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##### 2. The nature of band government

Band governments are not "local" or "municipal" governments in the traditional meaning of these terms. Their particular relationship with the Federal government, the nature and character of their concerns and responsibilities and their function as a focus of common identity make band governments different from the governments of typical town or village. They should be viewed as a different form of authority and the structure, and responsibilities of band government should be matched to their particular needs and characteristics.





3. Band government as the center of decision making

Band governments should be the center of decision making for reserve communities. Indian involvement in decision making at other levels (i.e. district, regional, national) should derive its authority from the band governments.

4. Flexibility/elective principle

The band government system must have the flexibility to cope with the wide divergence in economic, cultural, political and administrative development of Indian bands across the country. Bands should have the opportunity to choose the level of governance best suited to their needs, desires, and capabilities.

5. Responsibility and accountability

... (a) The Band government system should be based on the principles of responsibility and accountability. The members of a band, individually and collectively, must have at their disposal the means to ensure that the band government exercises its powers in a way whereby it is held responsible for its actions.

(b) To as great an extent as possible band governments should be financed in a way which will enable them to be fully accountable and responsible for their own expenditures and which decrease the need of the Department for detailed control of budgeting and expenditures. At the same time band governments must remain accountable to Parliament for funds received from the Federal Government.

6. Advisory role for DIAND

The DIAND should act primarily in an advisory rather than a supervisory or a control capacity in relation to band governments.

7. Continuing Federal Obligations

Band governments should be able to exercise their authority without adversely affecting:

(a) the unique and continuing relationships of the Indian people to the Federal Government or;

(b) the responsibility of the Federal Government to meet commitments under law or the various





treaties or

- (c) the special status of Indians and Indian lands; or
- (d) the number and quality of local services available to band members.

#### D. Specific Issues

Over the past few years several specific issues have been raised with regard to the revision of the system of band government. Some of these issues are relatively clearly defined and understood while others are very vague and have been discussed only in very general terms.

Following is a brief description of several of the most prominent of the specific issues identified to date. The resolution of these issues will probably be closely linked to a conclusion on the principles discussed above.

This list of issues should not be considered exhaustive. As study and discussion of band government progresses the definition and understanding of these issues, as well as the possible ways they can be resolved, will probably be modified.

#### 1. Division of Powers and Responsibilities

##### (a) Issue

Under the Indian Act and the administrative arrangements devised by DIAND, the division of powers and responsibilities between the band, the band council and the Federal Government is, in the view of many Indian people and officials of DIAND, unsatisfactory.

This appears to result from three major causes:

- i. The Indian Act (S81-83) does not give bands and or band councils sufficient powers and responsibilities to carry out the functions of local units of self-government. For example the need to refer by-laws for Ministerial approval (S.82) has been cited, in some instances, as an unnecessary limitation on the autonomy of bands.
- ii. There is conflict and confusion in the Indian Act with regard to jurisdiction over many powers and responsibilities and especially with regard to regulations made pursuant to S. 73.



For example, under S.81, bands have the power to make by-laws regarding "the regulation of traffic" while under S.73 the Governor in Council makes regulations regarding "the control of the speed, operation and parking of vehicles..."

- iii. The proliferation of administrative arrangements (e.g. agreements pursuant to Program Circulars) have created jurisdictional problems.

The lack of a clear division of powers and responsibilities is detrimental to the achievement of effective band government.

Another complicating factor which may affect band government concerns the application of provincial powers and responsibilities in relation to Indians living on and off reserves.

In recent years bands have increasingly become involved in the management of their own affairs. At the same time, the number and complexity of programs sponsored by the Federal Government has also increased. Indian Bands are taking on responsibilities that they have never assumed before and the Federal Government is providing services and programs never envisaged when a major revision to the Indian Act was made in 1951.

This situation has led to growing confusion regarding the division of powers as well as uncertainty as to the adequacy of the range of powers provided for bands in the present Act.

#### (b) Possible Policy Options

Under current Federal Government policy, Indian Bands are not recognized as authorities which have powers in their own right. Any position that bands exercise must be conferred on them by the Federal Government.

To date only one policy option has been identified to deal with this issue:

Amendment of the Indian Act to provide for a clear division of powers

The Act would be amended to divide the powers into three classifications:

- (1) exclusive federal powers. These would be powers which because of treaty, legal, or policy constraints would be within the sole jurisdiction of the Federal Government.





This class of powers would probably be limited to matters, such as the land registry system, in relation to which it is necessary to maintain a uniform system across the country.

- (2) shared powers. These would be powers which because of their national implications the Federal Government would want to retain some control over.

An example of this type of power might be housing with regard to which the Federal Government might want to ensure that minimum standards are maintained. At the same time it would be appropriate for the bands increasingly to have responsibility for the actual planning, construction and management of their housing.

- (3) Transferred powers. These would be powers which could, depending on the desires and capabilities of a band, be transferred to the sole jurisdiction of the band. The exercise of these powers would not require federal approval. However, the Federal Government might have some power to review band decisions.

An example of this type of responsibility could be local planning and zoning. This type of responsibility would have little or no impact on other bands on a national basis. Another example could be the responsibility of administering educational services to the Band.

These powers would have to be sufficient to ensure that the band government was able to function effectively as a unit of local self-government.

The powers to be enumerated under the three classifications would be a matter for consultation with the Indian people.

## 2. Methods of conferring powers and responsibilities on bands: the framework of band government

### (a) Issue

The Indian Act sets out the fundamental principles according to which all bands across the country are governed. It permits only limited flexibility in the formal system of band government.

It is generally agreed that this lack of flexibility is an impediment in the development of local self-government. In order for a band to effectively deal with the problems facing it, it must have a framework which is compatible with its characteristics and desires. The issue at point is how to best arrange the constitutional framework of bands so as to fulfill these needs.





When the Indian Act was last revised the level of economic, cultural, political and administrative development of bands was uniformly low across the country. In that environment the band framework entrenched in the Act adequately served the needs of most bands in the country.

However, with reserves developing economically and politically and with the need for more local autonomy and self-government the Indian Act presently is no longer sufficient for this purpose. Given the fact that within the next ten years reserves and native communities in Canada will represent a continuum of community types at various stages of development it will be necessary to ensure that the Indian Act has enough flexibility to deal with this diversity.

(b) Proposed Charter System General Outline

1. The proposed optional section of the Indian Act could be entitled "The Charter Band Option" or some equivalent.
2. The charter of the band in effect would be its constitution for the purpose of local self-government (within reserve) and possibly some extra territorial jurisdiction over band members residing off reserve.
3. The band(s) in question would be a legal entity with legal personality under an appropriate section in the revised Act.
4. The charter would be a negotiated instrument, providing for, among other things:
  - a functional description of the responsibilities, powers and functions the band(s) wished to assume under the charter;
  - the transfer and/or delegation of responsibilities and powers formerly exercised by the Minister/ Department under the existing Act;
  - the scope of the band's by-law jurisdiction selected from a revised list of by-law powers under Sections 81 - 83;



- by-law enforcement arrangements and procedures;
  - implications as regards Federal/Provincial laws of general application, e.g. Section 88;
  - the electoral system preferred by the band for its own band government;
  - financial arrangements for ensuring that resources were available to the band on a continuing basis to enable it to perform the functions and discharge the responsibilities acquired under the charter;
  - budgetary requirements and procedures;
  - a termination and amending procedure.
5. The revised Indian Act, Charter Band Section, would provide the statutory base for the charters. Initially at least the Governor-in-Council would be empowered to adopt orders providing for 2-5 categories of charter to afford flexibility and a range of options for bands at various stages of evolution and faced with various circumstances - together with appropriate criteria for each category.
6. Bands would make application for charter within these categories and criteria and enter into appropriate agreements with the Crown, represented by the Minister of Indian Affairs and Northern Development.
7. A agency (commission, board or tribunal) would be established by the Indian Act to be charged with responsibilities along the following lines:
- receiving, hearing and making recommendations on the band applications for charter;
  - ensuring that each party, that is, government and band, discharged its responsibilities and obligations under the charter agreement;





- ensuring that the band government discharged its responsibilities to individual band members as prescribed in the charter and otherwise in the Indian Act;
- possibly exercising some broader surveillance of the general relationship of the Government/Department and Indian governments.
- provision would be made for appeal to the Minister of decisions made by the agency.

Such an agency would have a mixed composition, would be quasi-judicial, but would be an instrument of government policy rather than an autonomous commission. It would report to the Government and Parliament through the Minister of Indian Affairs and Northern Development. It would be intended and designed to symbolize and safeguard the on-going federal responsibility in relation to the Indian people.

#### SOME CHARTER SYSTEM ALTERNATIVES

1. If the agency were created it could be given wider powers than those suggested above in the sense that it could, through statutory provision in the Indian Act, set the criteria for the various categories of charter as well as receiving, negotiating and regulating them (along the lines of the CRTC treatment of broadcasting franchises). There may be policy reasons for not moving in this direction. In any event, as experience is gained the regulatory agency might acquire some power and capacity for making recommendations on how the various criteria might be modified.
2. If the agency were not to be created, the agency role would presumably be exercised, as it is now, by the Minister/Department. This approach has definite disadvantages that could be mitigated if a semi-independent, mixed-membership commission or board were to take on the role of judge and jury.



3. A broad alternative to the whole charter system, as proposed, would be to set out in the Indian Act various categories of band government, much like the gradations of municipal government contained in provincial municipal codes. This approach might be suspect in the eyes of many Indians groups, it would be less flexible and adaptable to particular Indian needs and generally not as attractive to Indian bands because of the absence of a negotiated approach. To a large extent the proposed charter system would be very similar to the existing administrative arrangements for transferring responsibilities, powers and functions to band governments. These arrangements however have no statutory base and might not be enforceable if they were challenged in the courts either by an individual band member or some third party.

4. Legal Status of Bands

(a) Issue

The legal status of bands (and band councils) is uncertain. Unlike municipalities bands are not incorporated and therefore their status as "legal entities" is questionable. As a consequence the ability of bands to enter into contracts or sue or be sued in their own name is extremely limited and open to challenge.

Uncertainty as to the legal status of bands also puts in doubt their right to take advantage of tax concessions which are available to municipal governments under the terms of the Income Tax Act.

At the time the Indian Act was last revised Indian bands were relatively inactive and seldom if ever had any contact with agencies other than DIAND. The Department viewed Indian bands as an administrative extension of the Department; they were not seen as a form of independent local government.

In recent years bands have increasingly become involved in the management of their own affairs. This has required them to enter into many agreements with private and public bodies other than DIAND. These agreements have been complicated by the lack of legal status: in many cases the Department has had to formally accept legal and financial responsibilities which would fall on the band if it had legal status.

This problem will become more intense as bands take greater responsibility for their economic and social development.






(b) Amendment of the Indian Act to provide for incorporation of Indian bands

Under this proposal bands would be recognized as corporate entities in the same way that provincial municipal acts recognize provincial municipalities as corporate entities.

5. Referenda

Several matters which band governments have the power and responsibility to deal with, or may have in the future, could be considered to be extraordinary because they have a fundamental impact on the future of the reserve community. One example is the disposal of reserve lands. It has been proposed that decisions regarding such extraordinary matters should require the direct consent of the band membership expressed via a referendum. At the present time some matters, such as land surrenders are already decided upon using this mechanism.

The mechanism of the referendum system and the matters which should be subject to referendum will require further study and discussion with native people.





### III

#### EDUCATION

##### A. Background

There are three basic grounds upon which the education sections of the present Indian Act stand in need of revision in furtherance of the policy of Indian control of Indian education.

- a. The need to cater for the rapid development in the local control of Indian education by Band Councils.
- b. the need to reflect present-day concerns in the area of child and parental rights, the invasion of privacy, etc., in matters of school attendance, truancy, etc.
- c. The need to improve and clarify the administration, quality and scope of education for Indians.

##### B. Issues

Areas of the present Indian Act for which specific revisions are suggested include both those identified by the N.I.B. and those identified by Departmental officials. In these considerations, it should be borne in mind that there are two elements of underlying importance which impinge upon these issues.

These are:

1. Local control as it affects Band Council relationships with Band members living off reserve;  
and
2. Federal Government responsibility for the extension of services to Indians living off reserve.

##### C. "Charter System"

This concept has been referred to previously in the context of Indian band government. One of its specific applications could be in the delegation of responsibility for administering educational services to Band Councils. The observance of certain criteria is considered essential, however, in the development of the nature of the charter for which a Band Council could apply in order to achieve local control of Indian education.





- (i) The Minister must retain the ultimate responsibility for the program; this is something he cannot delegate to a Band Council;
- (ii) Some standards for ensuring the quality of education Indian children receive should be agreed upon;
- (iii) Procedures for budgetting, administration and accounting should be agreed upon which are not inconsistent with the general principles of public funds accountability contained in the Financial Administration Act;
- (iv) Standard procedures, whereby referenda on the asking for or the returning of a "charter" are held, should be agreed upon;
- (v) The extent of Band Council powers in respect to administering educational services for Band members living off reserve should be resolved.

b. Other Sections of the Act

Section 114(1) - A new subsection (f) could be added which would specify that Indian Bands are a recognized authority with whom the Minister may enter into an agreement (in this case, a charter) for the provision of education services to Indians.

Section 115(1) - Some more precise definition would seem to be required concerning the controls upon the quality of education for Indian children; questions of teacher qualifications; development of curriculum, accreditation, supervision, etc., are in need of clarification.

Section 115(1) - This section, dealing with the transference of moneys accruing to an Indian child to the residential school being attended, is largely redundant; it could be either amended or deleted.



Section 117, 118 and 123(c) - These sections, dealing with attendance and truancy, need to be revised in terms of (a) local control mechanisms for Indian education and (b) bringing them into line with today's thinking on the protection of children's and parent's rights, the protection of the RCMP in relationship to Indian Bands.

Section 120 - There is no basic disagreement with the N.I.B. on the need to delete Section 120 from the present Act; it is essentially a punitive section, and pre-empts any intermediate corrective action under the circumstances to which it relates (lateness, absenteeism or suspension from school).

Section 121 - It would appear necessary to review this section because the rebirth of traditional Indian religious beliefs and practices has become increasingly more marked. The annual Indian Ecumenical Conference on the Morley Reserve has become the gathering place for hundreds of Indian religious leaders each summer. In Western Canada, no major gathering takes place without an invocation to the Great Spirit in an Indian tongue, and the burning of sweetgrass: across the country, similar invocations accompany the opening of all major events, including the opening of new schools on reserves. The Sun Dance, the Pot-latch, the Sacred Societies of the Plains Cree, the Long house religion, shamanism, the Midewewin these and others are assuming a significance in Indian society consistent with the growing sense of Indian identity.

b. New Sections to the Act

Language of Instruction. No mention is made in the present Act about the language of instruction in Indian schools. With both the recommendations of the House Standing Committee on Indian Affairs (June 22, 1971) and the increasing use of native languages in mind, some definition would seem to be required. This could cover (a) the use of native





languages in kindergarten; (b) the use of native languages in the primary grades (% of instruction for which it could be used, etc.); (c) the place of native languages in the instructional program in Grade 4 and up; (d) the use of the official languages in Indian schools.

General Administration. Some consideration might be given to a comparison of what is in the present Act and what has recently been included in other recent Legislative enactments, particularly the Northwest Territories, Education Ordinance, and the Cree Education Act arising out of the James Bay Agreement. Some of the provisions written into these two instruments impinge directly upon the same elements of native education with which this Department is directly concerned, and some cognizance of what has been proposed by these other authorities could well assist in the restructuring of additional sections of the Indian Act in areas in which it is currently silent.



#### IV

### Discrimination on the Grounds of Sex in the Indian Act

#### Background

One of the priority areas for revisions to the Indian Act is Section 12(1)(b) which discriminates against Indian women on the grounds of sex. According to Section 12(1)(b) of the Indian Act, Indian women who marry non-Indians lose their status. However, Indian men who marry non-Indians retain their status. Furthermore, their non-Indian wives gain Indian status by virtue of their marriage (Section 11(1)(f)).

There is at least one way in which the present Indian Act also discriminates against men. Unlike the case for an Indian woman when an Indian man enfranchises he may not regain his status through marriage to an Indian.


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Indian women who have lost their status as a result of 12(1)(b) have recently taken their cases to the United Nations Commission on Human Rights. They have turned to this international body because the Indian Act was exempted from the effects of the Federal Human Rights Act. The exemption clause was included in the Human Rights Act to maintain the Government's commitment to the Indian people not to change the Indian Act without consulting the Indian people.

#### Alternative to 12(1)(b)

When considering alternatives to 12(1)(b), there are three possibilities with regard to status for the registered Indian who marries a non-Indian, and for the non-Indian who marries a registered Indian: in both cases, he or she may retain status, may lose or gain status, or may choose. These possibilities are considered in terms of the following three alternatives.

1. All registered Indians retain their registered status on marriage to a non-Indian and non-Indian spouses may gain registered status if they choose to do so. As S.11(1)(f) of the Act now reads, such a choice is legally available to a non-Indian woman who marries an Indian man, although in practice it appears that she is not asked, and in effect "automatically" becomes a registered Indian. This automatic treatment could be considered as a violation of the human rights of an individual who may in fact not wish to acquire Indian status.





2. All registered Indians lose their status on marriage to a non-Indian and non-Indian spouses do not gain registered Indian status. This alternative would artificially remove the registered status of some Indians and could be considered a violation of their right to retain that status even after marriage to a non-Indian. It would also reduce the number of registered Indians.
3. All registered Indians retain their status on marriage to a non-Indian and non-Indian spouses do not gain status. This alternative would permit each person to retain whatever status he or she has and is more in keeping with current federal human rights legislation.

### Special Issues

#### 1. Status of Children

The status of children becomes problematic if alternative 1 or 3 is agreed upon. This would be a crucial factor in determining the long term effect (in terms of rights, numbers of individuals and costs) of any alternative. There are four possibilities to be discussed in regard to the status of children of mixed marriages ("mixed marriages" is taken to mean marriages where one spouse is a status registered Indian and one is not).

##### 1. No children of mixed marriages acquire status

This could result in a decrease in the registry as under the present Act children of mixed marriages whose fathers are registered Indians have registered status.

##### 2. All children of mixed marriages have registered status

This could result in an increase in the registry as under the present Act only children of mixed marriages whose fathers are registered Indians have Indian status.





3. All children of mixed marriages may choose status at the age of majority if they so desire and may become band members if accepted by the band.

This alternative has the advantage of permitting the individual a choice while leaving band membership at the discretion of the band. It would raise problems regarding residency on a reserve.

This alternative would require the establishment of fair and equitable criteria to be applied by all bands in accepting or rejecting those who opt for Indian membership.

4. All children of mixed marriages have status as long as they have 1/4 Indian blood.

The IRIW has proposed a resolution similar to this possibility, specifying that being "1/4 Indian" means having 1/4 Indian blood.

Another approach would be to determine "1/4 Indian" starting with a "charter group" which would be considered "100% Indian," and using a clearly defined set of rules. This approach could result in an increase in the population as described in possibility 2, but his increase would be controlled by the application of the 1/4 principle. (As noted in possibility 2, these children would have the right to enfranchise at the age of majority if they so choose).

## II. Retroactivity

There are practical and other difficulties with retroactivity in terms of increased demands on Indian lands and cost increases which would result from a larger Indian population. As well, there is concern that retroactivity in whatever reasonable way it is recognized may lead to further inequities. Moreover granting retroactivity in this case could set a precedent for demands from other groups who have been discriminated against in the past. It would be a difficult, if not impossible, task to right all the wrongs of past discrimination.

Given the clearly defined and limited group to which retroactivity might apply, however, there may be reason to give it some consideration.

The IRIW has proposed in Resolution No. 15 that:

"all persons living today who were involuntarily enfranchised, and their off-spring who meet the criteria of 1/4 blood, be registered as status



Indians retroactive to the day they lost their status".

The IRIW further specified that financial compensation not be retroactive either by way of payment to those entitled to be registered or by way of the returning of money by those who were involuntarily enfranchised".

In order to limit its effect the IRIW proposal might be modified to apply to all persons living today who were involuntarily enfranchised pursuant to Section 12(1)(b), and its predecessors, and their off-spring who meet the 1/4 blood criteria

It is presumed that in either of these cases, the Indians registered who would form the initial "charter group" would be considered to be status for purposes of future calculations under the "1/4 blood rule".





## LAND SURRENDER

At the December 12, 1977 meeting of the Joint Committee of Cabinet and the National Indian Brotherhood, it was agreed to accept and adopt the following recommendations of the Joint Working Group on Indian Act revision on the issue of land surrenders.

- A. The provisions within the Indian Act regarding surrenders of reserved lands for lease and other dispositions of land be abolished, except in the case of an unconditional and irrevocable surrender for sale of reserved lands. Accordingly, s. 37-41 of the Indian Act will continue to apply to an absolute sale of reserve land.
- B. That s. 2(1) of the Indian Act be revised to amend the definition of "reserves", so that "reserve" will, for the purposes of s. 73, 81 and 83 include any surrendered lands of which legal title remains vested in Her Majesty, with retroactive effect.
- C. That any leases, easement and rights which have been granted to surrendered lands shall continue in effect in accordance with the terms of its contents. However, these lands will become subject to ban by-laws on enactment of revisions.
- D. That for future leases or permits, provisions within the Indian Act will permit - the band, by referendum, to delegate authority to the band council to directly approve leases or permits. The delegation may be conditional or unconditional, limited or unlimited. This delegation may later be revoked by the band. In the event that no authority to approve leases has been delegated to the band council, leases and permits will only be approved by a band referendum.
- E. That leases of reserve lands would continue to be issued by Her Majesty in trust for the band, except insofar as s. 53 may be utilized to delegate the authority to lease to members of the band as approved by the Governor-in-Council.

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